Supreme Court, U. S.
FILED
AUG 8 1974
MICHAEL RODAK, JR., CLERK

APPENDIX

Supreme Court of the United States

October Term, 1973

No. 73-1288

ALFRED DUNHILL OF LONDON, INC.,

Petitioner,

v.

THE REPUBLIC OF CUBA and DANIEL SOLANO PINERA, as Interventor,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 21, 1974
CERTIORARI GRANTED MAY 13, 1974

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1973

No. 73-1288

ALFRED DUNHILL OF LONDON, INC.,

Petitioner,

v.

THE REPUBLIC OF CUBA and DANIEL SOLANO PINERA, as Interventor,

Respondents.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

INDEX

	Page
Chronological List of Relevant Docket Entries	1
Interventor-Plaintiffs' Complaint, filed May 26, 1967	5
Defendant Alfred Dunhill of London, Inc.'s Answer, filed November 24, 1967	7
Interventor-Plaintiffs' Reply, filed November 30, 1967	12
Defendant Alfred Dunhill of London, Inc.'s Amended Answer, filed January 14, 1969	14
Transcript of Proceedings in District Court Pages 799-802	19

Page

Opinion of District Court, filed March 20, 1972 [reproduced in Joint Appendix, filed with Petition for Certiorari, at 41a - 73a]

Supplemental Memorandum to District Court Opinion, filed June 14, 1972 [reproduced in Joint Appendix, at 73a - 75a]

Judgment of District Court, filed August 14, 1972 23

Opinion of Court of Appeals, filed September 24, 1973 [reproduced in Joint Appendix, at 1a - 38a]

Denials by Court of Appeals of Petitions for Rehearing and Rehearing en banc, filed November 14, 1973 [reproduced in Joint Appendix, at 39a - 40a]

Letter from United States Supreme Court granting a Writ of Certiorari and directing counsel to brief and argue specific questions 28

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

This is a petition for certiorari to review the decision of the Court of Appeals for the Second Circuit in four actions against petitioner Dunhill consolidated in the District Court, 61 Civ. 848; 61 Civ. 849; 61 Civ. 850; and 61 Civ. 869. Since the docket entries in these cases are similar, and the four actions were consolidated prior to the filing of amended pleadings, only the relevant docket entries for 61 Civ. 848 are set forth herein.

Date	Proceedings
March 7, 1961	Filed complaint and issued summons.
March 15, 1961	Filed summons and return - served defendants 3/7/61.
[March 27, 1961 to September 29, 1966 -- Various stipulations extending time of defendants to answer.]	
May 16, 1967	Filed notice and order that action is consolidated with 61-849, 61-850, and 61-869 and permitting Republic of Cuba and Daniel Solano Pinera as interventor of Menendez Garcia y Compania, Limitada; F. Palicio y Compania, S.A.; Cifuentes y Compania and Por Larranaga, Fabrica de Tabacos, S.A., permitted to intervene as parties plaintiff in the consolidated action -- the interventor plaintiffs are to file complaint within 45 days as indicated and title is amended accordingly -- Bryan, J M/N.

Date	Proceedings
May 29, 1967	Filed complaint of Interventor-Plaintiffs.
November 8, 1967	Filed Amended Complaint. (Also in 61 Civ. 849, 61 Civ. 850 and 61 Civ. 869.)
November 24, 1967	Filed defendant (Alfred Dunhill of London) Answer to complaint of Interventor-Plaintiffs.
November 30, 1967	Filed Interventor-Plaintiffs Reply to counterclaim of defendant (Alfred Dunhill of London).
December 20, 1967	Filed Interventor-Plaintiffs Interrogatories.
December 27, 1967	Filed defendant Alfred Dunhill of London Interrogatories.
January 8, 1968	Filed Defendant Answers to Interrogatories (Alfred Dunhill of London, Inc.).
January 23, 1968	Filed Answers of Interventor-Plaintiffs to interrogatories, propounded by defendant Alfred Dunhill of London, Inc.
January 14, 1968	Filed Defendant (Alfred Dunhill of London) Amended Answer to the complaint of the Interventor-Plaintiffs.
January 8, 1969	Before Bryan, J. - non-jury trial begun.
January 9, 1969	Trial continued.
January 10, 1969	Trial continued.
January 13, 1969	Trial continued.
January 14, 1969	Trial continued.
January 15, 1969	Trial continued and concluded. Decision reserved.
March 20, 1972	Filed Opinion #38347 by Bryan, J. "This opinion constitutes findings of fact and conclusions of law in the consolidated actions. Settle Judgment on 30 days' notice." (mailed notices) (Filed in 61 Civ. 472).

Date	Proceedings
April 19, 1972	Filed Defendant Alfred Dunhill of London, Inc. notice of motion returnable at time and place designated by court, for an order clarifying opinion filed 3-20-72.
June 14, 1972	Filed Supplemental Memorandum by Bryan, J.
August 14, 1972	Filed Final Judgment #72,776. Bryan, J. Judgment entered 8-23-72 Clerk. Entered 8-24-72 - mailed notice.
September 8, 1972	Filed Notice of Appeal by the Republic of Cuba and Daniel Solano Pinera, as Interventor of Menendez, Garcia y Compania, Limitada, etc. (mailed copies).
September 21, 1972	Filed defendants Alfred Dunhill of London, Inc. Notice of Appeal to the U.S. Court of Appeals for the Second Circuit from the Order of the Final Judgment of Aug. 23-72. Mailed Notice to Rabinowitz, Boudin & Standard & Jac M. Wolff.
June 19, 1973	Argument heard (by: Friendly, Feinberg and Mansfield, CJJ)
September 24, 1973	Judgment Affirmed in part; reversed in part, Mansfield (& in 72-2379, 72-2385, 72-2390-92, 72-2400-02)
October 9, 1973	Filed petition for rehearing and rehearing in banc (& in 72-2379, 72-2385, 72-2390-92, 72-2400-02) with proof of service
November 14, 1973	Filed order denying petition for rehearing (& in 72-2379, 72-2385, 73-2390-92, 72-2400-02)
November 14, 1973	Filed order denying petition for rehearing in banc (& in 72-2379, 72-2385, 72-2390-92, 72-2400-02)
February 11, 1974	Filed copy of notice by Supreme Court granting extension of time to petition for writ of certiorari to 2-21-74
February 28, 1974	Filed notice of filing of petition for writ of certiorari (Alfred Dunhill) (S.C.#73-1288) (& in 72-2379,85, 90-1-2, 2400-01-02)

Date	Proceedings
February 28, 1974	Filed notice of filing of petition for writ of certiorari (Saks and Co.) (S.C.#73-1289) (& in 72-2379, etc.)
February 28, 1974	Filed notice of filing of petition for writ of certiorari (Republic of Cuba) (S.C.#73-1287) (& in 72-2379, etc.)
May 20, 1974	Filed certified copy of order of Supreme Court granting petition for writ of certiorari (S.C.#73-1288) (Alfred Dunhill) Council in this case are directed to brief and argue certain questions.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RAFAEL CIFUENTES, RAMON CIFUENTES and MANUEL CIFUENTES, co-partners, doing business under the firm name and style of CIFUENTES Y COMPANIA; ALONSO MENENDEZ, JOSE M. GARCIA, BENJAMIN MENENDEZ and ADOLFO GARCIA, co-partners, doing business under the firm name and style of MENENDEZ, GARCIA Y COMPANIA, LIMITADA; POR LARRANAGA, FABRICA DE TABACOS, S.A.; and F. PALICIO Y COMPANIA, S.A.,

Owner-Plaintiffs,

- against -

THE REPUBLIC OF CUBA and DANIEL SOLANO PINERA, as Interventor of MENENDEZ, GARCIA Y COMPANIA, LIMITADA; F. PALICIO Y COMPANIA, S.A.; CIFUENTES Y COMPANIA and POR LARRANAGA, FABRICA DE TABACOS, S.A.,

Interventor-Plaintiffs,

- against -

DUNHILL INTERNATIONAL, INC. and ALFRED DUNHILL OF LONDON, INC.,

Defendants.

Interventor-plaintiffs, for their complaint, by their attorneys, Rabinowitz & Boudin, respectfully allege:

1. This Court has jurisdiction of this action under Title 28, U.S.C. § 1332. Interventor-plaintiff Republic of Cuba is a foreign state; interventor-plaintiff Daniel Solano Pinera is a citizen of the Republic of Cuba; Menendez, Garcia y Compania, Limitada, F. Palicio y Compania, S.A., Cifuentes y Compania and Por Larranaga, Fabrica de Tabacos, S.A. are business entities organized under the laws of the Republic of Cuba. Defendants Dunhill International, Inc. and Alfred Dunhill of London, Inc. are corporations organized under the laws of the State of Delaward, with offices at 11 East 26th

Street, New York, N.Y.

2. The matter in controversy exceeds, exclusive of interest and costs, the sum of $10,000.

3. Defendants are engaged in the importation and sale of cigars and other tobacco products.

4. Interventor-plaintiff Daniel Solano Pinera is the interventor, duly appointed under the laws of Cuba, of Menendez, Garcia y Compania, Limitada, F. Palicio y Compania, S.A., Cifuentes y Compania and Por Larranaga, Fabrica de Tabacos, S.A., all of which are business entities engaged in the manufacture of cigar and other tobacco products in Cuba and in the sale of such products throughout the world.

5. At various times between September 15, 1960 and February 28, 1961, the interventor-plaintiffs sold to the defendant Alfred Dunhill of London, Inc. cigars on an open account on which there is now owing the sum of $91,416.25.

WHEREFORE, interventor-plaintiffs demand judgment against the defendant Alfred Dunhill of London, Inc. in the sum of $91,416.25 with interest from February 28, 1961, together with the costs and disbursements of this action.

RABINOWITZ & BOUDIN

By Victor Rabinowitz
Victor Rabinowitz
Member of the Firm
30 East 42nd Street
New York, N.Y. 10017

Dated, May 26, 1967

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RAFAEL CIFUENTES, RAMON CIFUENTES and MANUEL CIFUENTES, co-partners, doing business under the firm name and style of CIFUENTES Y COMPANIA; ALONSO MENENDEZ, JOSE M. GARCIA, BENJAMIN MENENDEZ, JOSE MENENDEZ and ADOLFO GARCIA, co-partners, doing business under the firm name and style of MENENDEZ, GARCIA Y COMPANIA, LIMITADA; POR LARRANAGA, FABRICA DE TABACOS, S.A.; and F. PALICIO Y COMPANIA, S.A.,	61 Civ.	848 849 850 869
Owner-Plaintiffs,		
-against-	ANSWER	
THE REPUBLIC OF CUBA and DANIEL SOLANO PINERA, as Interventor of MENENDEZ GARCIA PINERA, as Interventor of MENENDEZ, GARCIA Y COMPANIA, LIMITADA; F. PALICIO Y COMPANIA, S.A.; CIFUENTES Y COMPANIA and POR LARRANAGA, FABRICA DE TABACOS, S.A.,		
Interventor-Plaintiffs,		
-against-		
DUNHILL INTERNATIONAL, INC. and ALFRED DUNHILL OF LONDON, INC.,		
Defendants.		

Defendant, Alfred Dunhill of London, Inc., by its attorneys, Strasser, Spiegelberg, Fried & Frank, answering the complaint of the Interventor-Plaintiffs as against said defendant, respectfully alleges as follows:

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "1" of the complaint, except admits that the Republic of Cuba is a foreign state and that defendant

Alfred Dunhill of London, Inc. (hereinafter referred to as "Dunhill") is a corporation organized under the laws of the State of Delaware with offices at 11 East 26th Street, New York, New York, and denies that defendant Dunhill International, Inc. maintains offices at 11 East 26th Street, New York, New York.

2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "4" of the complaint.

3. Denies each and every allegation contained in paragraph "5" of the complaint, except admits that subsequent to September 15, 1960, the interventor-plaintiffs shipped cigars to defendant Dunhill on an open account.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE, SET-OFF AND COUNTERCLAIM

4. On cigars shipped by said interventor-plaintiffs to defendant Dunhill subsequent to September 15, 1960, there exist outstanding and unpaid claims of defendant Dunhill for damaged cigars in the amount of $1,484.88, for a lost shipment of cigars in the amount of $200.65, and for advertising allowances in the amount of $7,910.19.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE, SET-OFF AND COUNTERCLAIM

5. That at various times subsequent to September 15, 1960, the interventor-plaintiffs

sold to defendant Dunhill the cigars which are the subject of this action, and said interventor-plaintiffs represented that they were the owners thereof, had full title thereto, and impliedly warranted that said cigars were delivered free of the rightful claim of any third person by way of trademark infringement.

6. That in purchasing said cigars defendant Dunhill relied on said implied warranty.

7. That on or about November 9, 1967, the owner-plaintiffs in this action served defendant Dunhill with an amended complaint alleging that defendant Dunhill has infringed trademarks owned by said owner-plaintiffs, which trademarks were affixed to the cigars sold by the interventor-plaintiffs to defendant Dunhill, and thereby has committed acts of unfair competition against the said owner-plaintiffs, that said amended complaint demands judgment from defendant Dunhill for treble damages and seeks an accounting of the gains, profits and advantages of defendant Dunhill by reason of the alleged infringement of trademarks and acts of unfair competition.

8. That said interventor-plaintiffs have had actual notice of the claims of the owner-plaintiffs by reason of their standing in this action and by service of the amended complaint upon said interventor-plaintiffs; and that said interventor-plaintiffs have refused to defend said action on behalf of defendant Dunhill.

9. That by reason of the foregoing, the interventor-plaintiffs are or may be liable to defendant Dunhill

wholly or in part for any judgment obtained against defendant Dunhill by said owner-plaintiffs on account of the aforesaid claims, together with the costs to Dunhill, including reasonable attorneys' fees, incurred in the defense of said claims.

AS AND FOR A THIRD
AFFIRMATIVE DEFENSE

10. Payment by defendant Dunhill of any sums which may be due to interventor-plaintiffs for cigars shipped subsequent to September 15, 1960 has been prohibited by law at least since July 8, 1963 by virtue of the provisions of the Cuban Assets Control Regulations, 31 C.F.R. 515.101 et seq.

WHEREFORE, defendant Dunhill demands judgment against the interventor-plaintiffs as follows:

(a) dismissing the complaint served on behalf of the interventor-plaintiffs;

(b) in the amount of $9,595.72 on account of the First Set-Off and Counter-claim contained herein; and

(c) in the amount of any judgment obtained against defendant Dunhill by the owner-plaintiffs on account of the claims of trademark infringement and unfair competition asserted by said owner-plaintiffs against defendant, together

with the costs to defendant Dunhill, including reasonable attorneys' fees, incurred in the defense of said claims, together with the costs and disbursements of this action.

STRASSER, SPIEGELBERG, FRIED & FRANK

By: _____
A Member of the Firm
Attorneys for Defendant
ALFRED DUNHILL OF LONDON, INC.
Office & P.O. Address
120 Broadway
New York, New York 10005

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RAFAEL CIFUENTES, RAMON CIFUENTES and MANUEL CIFUENTES, co-partners, doing business under the firm name and style of CIFUENTES Y COMPANIA: ALONSO MENENDEZ, JOSE MENENDEZ and ADOLFO GARCIA, co-partners, doing business under the firm name and style of MENENDEZ, GARCIA Y COMPANIA, LIMITADA; POR LARRANAGA, FABRICA DE TABACOS, S.A.; and F. PALICIO Y COMPANIA, S.A.,	:	61 Civ. 848 849 850 869
Owner-Plaintiffs,	:	
- against -	:	
THE REPUBLIC OF CUBA and DANIEL SOLANO PINERA, as Interventor of MENENDEZ GARCIA PINERA, as Interventor of MENENDEZ, GARCIA Y COMPANIA, LIMITADA; F. PALICIO Y COMPANIA, S.A.; CIFUENTES Y COMPANIA and POR LARRANAGA, FABRICA DE TABACOS, S.A.,	:	REPLY
Interventor-Plaintiffs,	:	
- against -	:	
DUNHILL INTERNATIONAL, INC. and ALFRED DUNHILL OF LONDON, INC.,	:	
Defendants.		

The interventor-plaintiffs, by Rabinowitz & Boudin, their attorneys, for their reply to the answer of the defendant, Alfred Dunhill of London, Inc., allege:

AS AND FOR A REPLY TO
THE FIRST COUNTERCLAIM

1. Deny each and every allegation contained in paragraph 4 of the answer.

AS AND FOR A REPLY TO
THE SECOND COUNTERCLAIM

2. Deny each and every allegation contained in paragraphs 5, 6, 8 and 9 of the answer.

3. Deny each and every allegation contained in paragraph 7 of the answer, except admit that the owner-plaintiffs in this action have served defendant, Alfred Dunhill of London, Inc., with an amended complaint; interventor-plaintiffs respectfully refer the Court to that complaint for a full statement of the contents thereof.

WHEREFORE, the interventor-plaintiffs demand judgment against the defendant, Alfred Dunhill of London, Inc., dismissing the first and second counterclaims set forth in its answer.

RABINOWITZ & BOUDIN

By: /s/ Victor Rabinowitz
Attorneys for the Interventor-Plaintiffs
Office & P.O. Address
30 East 42nd Street
New York, New York 10017

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

RAFAEL CIFUENTES, et al.,

Owner-Plaintiffs,

-against-

THE REPUBLIC OF CUBA, et al.,

Interventor-Plaintiffs,

-against-

DUNHILL INTERNATIONAL, INC. and ALFRED DUNHILL OF LONDON, INC.,

Defendants.

- X

61 Civ. 848
849
850
869

AMENDED ANSWER

Defendant, Alfred Dunhill of London, Inc., by its attorneys, Strasser, Spiegelberg, Fried & Frank, as and for its amended answer to the complaint of the Interventor-Plaintiffs as against said defendant, respectfully alleges as follows:

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "1" of the complaint, except admits that the Republic of Cuba is a foreign state and that defendant Alfred Dunhill of London, Inc. (hereinafter referred to as "Dunhill") is a corporation organized under the laws of the State of Delaware with offices at 11 East 26th Street, New York, New York, and denies that defendant Dunhill International, Inc. maintains offices at 11 East 26th Street, New York, New York.

2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "4" of the complaint.

3. Denies each and every allegation contained in paragraph "5" of the complaint, except admits that subsequent to September 15, 1960, the interventor-plaintiffs shipped cigars to defendant Dunhill on an open account.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE, SET-OFF AND COUNTERCLAIM

4. On cigars shipped by said interventor-plaintiffs to defendant Dunhill subsequent to September 15, 1960, there exist outstanding and unpaid claims of defendant Dunhill for damaged cigars in the amount of $1,484.88, for a lost shipment of cigars in the amount of $200.65, and for advertising allowances in the amount of $7,910.19.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE, SET-OFF AND COUNTERCLAIM

5. That at various times subsequent to September 15, 1960, the interventor-plaintiffs sold to defendant Dunhill the cigars which are the subject of this action, and said interventor-plaintiffs represented that they were the owners thereof, had full title thereto, and impliedly warranted that said cigars were delivered free of the rightful claim of any third person by way of trademark infringement.

6. That in purchasing said cigars defendant Dunhill relied on said implied warranty.

7. That on or about November 9, 1967, the owner-plaintiffs in this action served defendant Dunhill with an amended complaint alleging that defendant Dunhill has infringed trademarks owned by said owner-plaintiffs, which trademarks were affixed to the cigars sold by the interventor-plaintiffs to defendant Dunhill, and thereby has committed acts of unfair competition against the said owner-plaintiffs, that said amended complaint demands judgment from defendant Dunhill for treble damages and seeks an accounting of the gains, profits and advantages of defendant Dunhill by reason of the alleged infringement of trademarks and acts of unfair competition.

8. That said interventor-plaintiffs have had actual notice of the claims of the owner-plaintiffs by reason of their standing in this action and by service of the amended complaint upon said interventor-plaintiffs; and that said interventor-plaintiffs have refused to defend said action on behalf of defendant Dunhill.

9. That by reason of the foregoing, the interventor-plaintiffs are or may be liable to defendant Dunhill wholly or in part for any judgment obtained against defendant Dunhill by said owner-plaintiffs on account of the aforesaid claims, together with the costs to Dunhill, including reasonable attorneys' fees, incurred in the defense of said claims.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE, SET-OFF AND COUNTERCLAIM

10. Prior to September 15, 1960 the owner-plaintiffs shipped to defendant, and defendant received, shipments of cigars, the invoice prices of which are set forth in Exhibit A to the Stipulation of Facts to which defendant respectfully refers.

11. Subsequent to September 15, 1960, defendant made payment for the aforesaid shipments by checks. The dates of said checks and the persons to whom said checks were made payable are set forth in the aforesaid Exhibit A.

12. On information and belief, interventor-plaintiffs received and retained the proceeds of said checks despite the fact that they knew or should have known that they were not entitled thereto.

13. Defendant has duly demanded of the interventor-plaintiffs return of said proceeds, but no part thereof has been repaid by the interventor-plaintiffs.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

14. Payment by defendant Dunhill of any sums which may be due to interventor-plaintiffs for cigard shipped subsequent to September 15, 1960 has been prohibited by law at least since July 8, 1963 by virtue of the provisions of the Cuban Assets Control Regulations, 31 C.F.R. 515.101 et seq.

WHEREFORE, defendant Dunhill demands judgment

against the interventor-plaintiffs as follows:

(a) dismissing the complaint served on behalf of the interventor-plaintiffs;

(b) in the amount of $9,595.72 on account of the First Set-Off and Counter-claim contained herein;

(c) in the amount of any judgment obtained against defendant Dunhill by the owner-plaintiffs on account of the claims of trademark infringement and unfair competition asserted by said owner-plaintiffs against defendant, together with the costs to defendant Dunhill, including reasonable attorneys' fees, incurred in the defense of said claims; and

(d) in the amount of all sums received by the interventor-plaintiffs for shipments of cigars to the defendant Dunhill made by the owner-plaintiffs prior to September 15, 1960,

together with the costs and disbursements of this action.

STRASSER, SPIEGELBERG, FRIED & FRANK

By: _____
A Member of the Firm
Attorneys for Defendant
ALFRED DUNHILL OF LONDON, INC.
Office and P.O. Address
120 Broadway
New York, New York 10005

your honor, yourself.

(Recess)

THE COURT: All right.

MR. BLUMSTEIN: The defendant Faber, Coe & Gregg rests, your Honor.

MR. FRIEDMAN: Just two things for defendant Dunhill. We have been handed this morning amended answers to conform to the proof, both to the complaint of the interventor-plaintiffs and the owner-plaintiffs, and I would ask leave to serve and file those amended answers.

THE COURT: Do they change any issues in the case?

MR. FRIEDMAN: No, your Honor, not at all.

MR. RABINOWITZ: They do. I haven't had an opportunity to read it closely but --

MR. FRIEDMAN: Let me describe the amended answers.

THE COURT: Describe the amendments.

MR. FRIEDMAN: The only amendment to the complaint of the owner-plaintiffs is specifically setting forth an affirmative defense to payment with regard to the pre-intervention shipments. And the only change in the amended

answers to the complaint of the interventor-plaintiffs is to allege a setoff and counterclaim similar to the one that was proposed by Mr. Grosz on behalf of Saks, that is, for either money having been received, or whatever the theory is, the moneys received by the interventor-plaintiffs for goods sold or shipments made prior to September 15, 1960.

THE COURT: Well, let me just follow that a minute. I would presume that what you are saying is, in substance, that if I should hold that-- no, I don't quite follow you. Suppose you spell that out a little more carefully, Mr. Friedman.

MR. FRIEDMAN: It would really be in the nature of an alternative argument, your Honor. If the payments that were made by defendant Dunhill after intervention for the goods sold or the goods shipped prior to intervention constitute payment and a discharge on behalf of Dunhill, then the amended answer to the interventor complaint is really irrelevant. But in the alternative, if your Honor should hold that that did not constitute sufficient payment in behalf of Dunhill's obligation --

THE COURT: They're still liable to the owner-plaintiffs.

MR. FRIEDMAN: Then we should be entitled to recover and setoff against any such obligation the amounts that the interventor-plaintiffs received for pre-intervention shipments.

THE COURT: That is right.

MR. FRIEDMAN: I don't think there is any surprise in this. I think your Honor is well aware this has been an issue for well over a year now.

MR. RADINOWITZ: Subject to any defense we might have on the statute of limitations--

THE COURT: Obviously, if there are any defenses to the defenses you are entitled to serve a reply or whatever you want to call it. Presumably it is a reply, a pleading that would state your position. For instance, if you concede there will be a statute of limitation defense -- I am not saying that you do -- you certainly ought to have a pleading so you can draw the issue, and you are entitled to serve that within, say, five days if you wish.

MR. RADINOWITZ: Fine, and we may have the same amount of time then to serve a similar pleading in response to Saks who, I think, served a similar

answer on us two or three days ago.

THE COURT: All right.

MR. WOLFF: There was also served a proposed amended answer as to the complaint of the owner-plaintiffs. I see no claim against us for affirmative judgment, and I assume —

THE COURT: I don't think there could be. I see nothing in this case, Mr. Wolff, that gives rise to the claim for affirmative judgment against your client.

MR. WOLFF: What I would like to conclude with is this, that let it be presumed and deemed for the purposes of this record that the owner-plaintiffs have denied the allegations of the affirmative defenses in the nature of a reply.

THE COURT: All right, it is so assumed, on the record.

MR. WOLFF: And the same with the Saks new answer.

THE COURT: Same with the Saks amended complaint.

MR. FRIEDMAN: May I file it?

THE COURT: Yes, you may file it.

MR. FRIEDMAN: I have just one other thing,

Filed Aug 14 197[illegible]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RAFAEL CIFUENTES, RAMON CIFUENTES and MANUEL CIFUENTES, co-partners, doing business under the firm name and style of CIFUENTES Y COMPANIA; ALONSO MENENDEZ, JOSE M. GARCIA, BENJAMIN MENENDEZ, JOSE MENENDEZ and ADOLFO GARCIA, co-partners, doing business under the firm name and style of MENENDEZ, GARCIA Y COMPANIA, LIMITADA; POR LARRANAGA, FABRICA DE TABACOS, S.A.; and F. PALICIO Y COMPANIA, S.A.,

Owner-Plaintiffs,

-against-

THE REPUBLIC OF CUBA and DANIEL SOLANO PINERA, as Interventor of MENENDEZ, GARCIA Y COMPANIA, LIMITADA; F. PALICIO Y COMPANIA, S.A.; CIFUENTES Y COMPANIA and POR LARRANAGA, FABRICA DE TABACOS, S.A.,

Interventor-Plaintiffs,

-against-

ALFRED DUNHILL OF LONDON, INC.,

Defendant.

61 Civil 848
(Includes:
61 Civil 849;
61 Civil 850;
61 Civil 869)

FINAL JUDGMENT

This cause having been considered by this Court upon the pleadings and evidence presented on trial and upon the briefs by the counsel for the parties and upon the findings of fact and conclusions of law set forth in the opinions dated and filed in this Court on March 17, 1972 and June 14, 1972, it is

ORDERED, ADJUDGED AND DECREED:

1. Owner-plaintiff, Menendez, Garcia Y Compania, Limitad[illegible] recover of the defendant, Alfred Dunhill of London, Inc., the sum of $133,386.70 with interest thereon from March 7, 1961 at the rate of 6% to June 30, 1968, at the rate of 7-1/4% from July 1, 1968 to February 15, 1969, and at the rate of 7-1/2% from February 16, 1969 to July 19, 1972 in the sum of $98,893.74, amounting in all to $232,280.44.

2. The claim of the owner-plaintiff, Cifuentes Y Compania against the defendant, Alfred Dunhill of London, Inc. for goods sold and delivered is dismissed.

3. Owner-plaintiff, F. Palicio Y Compania, S.A., recover of the defendant, Alfred Dunhill of London, Inc., the sum of $1,928.65 with interest thereon from March 8, 1961 at the rate of 6% to June 30, 1968, at the rate of 7-1/4% from July 1, 1968 to February 15, 1969, and at the rate of 7-1/2% from February 16, 1969 to July 19, 1972, in the sum of $1,429.81, amounting in all to $3,355.46.

4. Owner-plaintiff, Por Larranaga Fabrica De Tabacos, S.A., recover of the defendant, Alfred Dunhill of London, Inc., the sum of $5,977.55 with interest thereon from March 7, 1961 at the rate of 6% to June 30, 1968, at the rate of 7-1/4% from July 1, 1968 to February 15, 1969, and at the rate of 7-1/2% from February 16, 1969 to July 19, 1972, in the sum of $4,431.95, amounting in all to $10,409.50.

5. Interventor-plaintiffs recover of the defendant, Alfred Dunhill of London, Inc., the sum of $92,949.70 with interest thereon from June 28, 1961 at the rate of 6% to June 30, 1968, at the rate of 7-1/4% from July 1, 1968 to February 15, 1969, and at the rate of 7-1/2% from February 16, 1969 to July 19, 1972, in the sum of $67,202.96, amounting in all to $160,152.66.

6. Defendant, Alfred Dunhill of London, Inc., recover of the owner-plaintiff, Menendez, Garcia Y Compania, Limitada, by way of offset for damaged cigars, a lost shipment and an advertising allowance the sum of $2,425.04 with interest thereon from March 7, 1961 at the rate of 6% to June 30, 1968, at the rate of 7-1/4% from July 1, 1968 to February 15, 1969, and at the rate of 7-1/2% from February 16, 1969 to July 19, 1972, in the sum of $1,791.36, amounting in all to $4,216.40.

7. Defendant, Alfred Dunhill of London, Inc., recover of the owner-plaintiff, F. Palicio Y Compania, S. A., by way of offset for damaged cigars, a lost shipment and an advertising allowance the sum of $744.94 with interest thereon from March 8, 1961 at the rate of 6% to June 30, 1968, at the rate of 7-1/4% from July 1, 1968 to February 15, 1969, and at the rate of 7-1/2% from February 16, 1969 to July 19, 1972, in the sum of $550.14, amounting in all to $1,295.08.

8. Defendant, Alfred Dunhill of London, Inc., recover of the owner-plaintiff, Por Larranaga Fabrica De Tabacos, S.A., by way of offset for damaged cigars, a lost shipment and an advertising allowance the sum of $666.07 with interest thereon from March 7, 1961 at the rate of 6% to June 30, 1968, at the rate of 7-1/4% from July 1, 1968 to February 15, 1969, and at the rate of 7-1/2% from February 16, 1969 to July 19, 1972, in the sum of $491.75, amounting in all to $1,157.82.

9. Defendant, Alfred Dunhill of London, Inc., recover of the interventor-plaintiffs, the sum of $141,292.90 and the sum of $5,759.70, said recoveries totalling $147,052.60 with interest thereon from June 28, 1961 at the rate of 6% to June 30, 1968, at the rate of 7-1/4% from July 1, 1968 to February 15, 1969, and at the rate of 7-1/2% from February 16, 1969 to July 19, 1972, in the sum of $106,320.17, amounting in all to $253,372.77.

10. Owner-plaintiff, Menendez, Garcia y Compania, Limitada was, as of February, 1961, the owner of trademark H. UPMANN and the United States trademark registration therefor No. 89,518 and the trademark MONTE CRISTO and the United States trademark registration therefor No. 332,324 and said trademarks and registrations were then valid and subsisting.

11. Owner-plaintiff, Cifuentes y Compania, was, as of February, 1961, the owner of its trademark PARTAGAS and the United States trademark registration therefor Nos. 356,751, 440,817, 544,329 and 545,830 and its trademark RAMON ALLONES and the United States trademark registrations therefor Nos. 240,574 and 529,452 and said marks and registrations were then valid and subsisting.

12. Owner-plaintiff, Por Larranaga Fabrica De Tabacos, S.A., was, as of February, 1961, the owner of its trademark POR LARRANAGA and the United States trademark registrations therefor Nos. 277,130 and 277,131 and said marks and registrations were then valid and subsisting.

13. Owner-plaintiff, F. Palicio y Compania, S.A., was, as of February, 1961, the owner of its trademark HOYO DE MONTERREY and the United States trademark registration therefor No. 86,340 and its trademark BELINDA and the United States trademark registrations therefor Nos. 111,205, 226,818 and 307,755 and its trademark PUNCH and the United States trademark registration therefor No. 261,894, which marks and registrations were then valid and subsisting.

14. The interventor-plaintiffs and the defendant, Alfred Dunhill of London, Inc., did unfairly compete with all of the owner-plaintiffs and infringed the said trademark rights of all of the owner-plaintiffs prior to February, 1961.

15. The owner-plaintiffs suffered no damage as a result of such unfair competition and infringement and hence are denied recovery of damages and profits with respect thereto.

16. The owner-plaintiffs are denied an injunction against future unfair competition and trademark infringement by the defendant and the interventor-plaintiffs at this time, but without prejudice to an application for such relief under appropriate circumstances in the future.

17. The owner-plaintiffs ~~and the interventor-plaintiffs~~ are hereby awarded costs against the defendant, ~~which costs shall be~~ borne by the defendant on a pro rata basis in ~~accordance with the total amounts required by this judgment to be actually paid by the defendant~~, respectively to the ~~owners and the interventors~~; and the defendant is awarded costs against the interventor-plaintiffs.

Frederick VP Bryan
U. S. D. J.

Dated: August 12 1972

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

May 13, 1974

Leon Silverman, Esq.
Fried, Frank, Harris, Shriver
& Jacobson
120 Broadway
New York, N. Y. 10005

RE: ALFRED DUNHILL OF LONDON, INC. v.
REPUBLIC OF CUBA, No. 73-1288

Dear Mr. Silverman:

The Court today took the following action in the above case:

"The petition for a writ of certiorari is granted. Counsel in this case are directed to brief and argue the following questions:

'1. Can statements by counsel for the Republic of Cuba, that petitioner's unjust enrichment counterclaim would not be honored, constitute an act of state?

'2. If so, is an exception to the act of state doctrine created, under First National City Bank v. Banco Nacional de Cuba, 406 U.S. 759 (1972), where petitioner's counterclaim does not exceed the net balance owed to Cuba on its claims by petitioner's co-defendants, and where all claims and counterclaims arise out of the subject matter in litigation in this case?'"

Enclosed are memorandums describing the time requirements and procedures under the Rules.

The additional docketing fee of $50, Rule 52(a) is due and payable.

Very truly yours,

MICHAEL RODAK, JR., Clerk
By Helen K. Loughran
(Mrs.) Helen K. Loughran
Assistant Clerk

Encls.